

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 389 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ASHOK STAINER PIPE

Versus

ONGC

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Appearance:

MR JJ SHAH for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/07/98

ORAL JUDGEMENT

1. The appellant herein moved application u/Ss. 8 and 9 of the Arbitration Act, 1940 before the 3rd Joint Civil Judge (S.D.) District Kheda at Nadiad. That was Civil Misc. Application No. 42 of 1990. The learned trial Judge as per his impugned order dated 17/3/1994 refused to grant relief of appointment of Arbitrator as prayed for by the applicant in the said application and

dismissed the same with cost.

2. The grievance of the applicant before the learned trial Judge was that the applicant satisfactorily completed the work under the contract in question and yet following legitimate dues were not paid by the respondent- Oil & Natural Gas Commission (ONGC) :-

- (A) Value of the work done but not paid amounting to Rs. 15,000/-,
- (B) Refund of the security deposit amounting to Rs.10,000/-, and
- (C) 18% running interest on A & B from due date of payment till realisation.

The application was resisted by the respondent on the ground that the breach of the contract was committed by the applicant and not by the respondent and that clause 25 of the contract in question does not contemplate the dispute which was sought to be referred to the arbitration.

3. It has been submitted on behalf of the appellant that even if the disputes with regard to value of work done and payment of interest as reflected by Clauses A and B hereinabove are not referred to arbitration, the respondent - ONGC should be directed atleast to refund the security deposit of Rs.10,000/- without interest and for that purpose the applicant should not be left to take some alternative remedy. There is a great deal of substance in this submission.

4. On going through the impugned order it does appear that the dispute, if any, would centre round value of the work done by the applicant or the value of the work left out and required to have been carried out by some other contractor and rate and amount of interest claimed by the applicant. However, it clearly appears from the impugned order and also submissions made on behalf of the rival parties that there could not have been any dispute regarding refund of security deposit without interest. It is not in dispute that more than 10 years have passed since the security deposit has been lying with the respondent- ONGC. The respondent - ONGC would be compensated in the matter of payment of interest

if at all there is any dispute as alleged by the respondent - ONGC. There is no reasonable ground for ONGC not to return the security deposit without interest. It would be absolutely inequitable and unjust if the matter is viewed in any other manner. ONGC being a public Corporation cannot be permitted to say that the claim of security deposit would also stand barred under law of limitation.

5. Under the aforesaid circumstances and bearing in mind the peculiar facts of the case, instead of directing the appellant to take appropriate remedy to get return of security deposit without interest, following direction is issued :-

The respondent - Oil & Natural Gas Commission will return to the appellant the amount of security deposit in the sum of Rs.10,000/- within four weeks from today.

The order of cost passed by the learned trial Judge is hereby set aside and there shall be no order as to cost throughout. This appeal will stand partly allowed in the aforesaid terms only. D.S.P.

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\*\*PVR\*\* ao 38994j.